

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES)
)
)
-vs-)
)
ROBERT BOWERS,) CR 18-292
)
Defendant.)

AMBROSE, Senior District Judge.

ORDER OF COURT

AND NOW, this 9th day of September, 2021, upon consideration of the Defendant's Motion to Modify Conditions of Physical Evidence Review to Protect Work Product (ECF 542), the Government's Response (ECF 548) and the Defendant's Reply (ECF 550), it is hereby ORDERED that the Motion is GRANTED IN PART AND DENIED IN PART. It is GRANTED insofar as the Defendant requests that United States Attorneys are not permitted to be present during the physical evidence review. There is nothing in Federal Rule of Criminal Procedure 16(a)(1)(E) suggesting that the prosecution has a right to be present during the review of such evidence. "Customary practice" and "efficiency" are not sufficient reasons to override Defendant's request in this instance, which involves a capital charge and takes place in the midst of a global pandemic.¹ However, the Motion is DENIED insofar as the Defendant requests that

¹ I note that the Defendant has filed a related Motion requesting an enlargement of time for physical evidence review (ECF 548), expressing concerns about the increasing spread of the Delta variant. Prohibiting United States Attorneys from being present during physical evidence review would aid in limiting the number of individuals the defense team would come into contact with.

government agents unrelated to this prosecution be utilized in overseeing the physical evidence review, and that they be prohibited from speaking with United States Attorneys regarding any observations of the Defense attorneys. This Court will not instruct federal law enforcement agencies on how to staff their evidence review. Further, the Defendant has not identified any binding case law suggesting that Federal Rule of Criminal Procedure 16 contemplates “confidential discussions” between defense counsel. Rather, it speaks of “inspect and copy.” Additionally, the Government has agreed to permit the Defendant to bring a camera to the physical evidence review for purposes of taking additional photographs, which would permit “robust discussions” at a later date.

BY THE COURT:



Donetta W. Ambrose
United States Senior District Judge